

## ORDER

<sup>2</sup>The Motion to Amend was filed as a “Stipulation to Redact Exhibits”, and sought to redact exhibits 1–8 that had been filed together with the Motion to Change Venue pursuant to Fed. R. Civ. P. 5.2(a). The Stipulation was granted per Court Order #14.

1 file an answer, and on July 3, 2006, a Default Judgment was entered against Plaintiff in the Superior  
2 Court of California in San Diego.

3 In December 2007, Plaintiff and her husband divorced. The Divorce Decree stated that  
4 Plaintiff's husband would assume responsibility for the deficiency balance of the car in the amount  
5 of \$7,310.46. Subsequent to Plaintiff's divorce, she was laid-off from her previous job at the  
6 Mandalay Bay Casino and began working for a 99¢ Only Store in Las Vegas, making \$8.05 per hour,  
7 earning less than \$362.50 per week.

8 On or about December 3, 2009, Plaintiff received a one-page, one-sided, typed  
9 communication from Defendant stating that Plaintiff owed Defendant a balance of \$2,492.27. The  
10 document encouraged Plaintiff to contact Defendant by dialing 1-800-622-2242 and asking to speak  
11 with Chris Peters. Plaintiff then contacted the Legal Aid Center of Southern Nevada, Inc. in regard  
12 to her alleged debt, as she believed the communication from Defendant to be incorrect.  
13 Subsequently, Plaintiff received a certified letter from the Defendant containing a copy of a  
14 California Judgment entered in the Superior Court of California, in San Diego, citing only an award  
15 of \$6,501.76 to Defendant.

16 Sometime later, Plaintiff learned that her checking account at JP Morgan Chase in Nevada  
17 had been attached pursuant to a California Writ of Execution dated January 26, 2010, filed in the  
18 Superior Court of California. On February 26, 2010, the attachment to Plaintiff's JP Morgan Chase  
19 Bank account was completed, and a total levy of \$2,520.70 was removed from Plaintiff's checking  
20 account and eventually transferred to Defendant. Here, Plaintiff avers that the funds in her JP  
21 Morgan Chase account were exempt from attachment under both Nevada and Federal law because  
22 she was making less than \$362.50 per week, and because Defendant failed to domesticate the foreign  
23 judgment in Nevada.

24 As stated above, Defendant's instant Motion seeks that the Court Dismiss this case, or in the  
25 alternative, change venue pursuant to Fed. R. Civ. P. 12(b)(3). Specifically, Defendant seeks that the  
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1 case be transferred to the Central District of California because MCT “does not reside in this district,  
2 maintains no office in this district, does not conduct business in this district, [and] does not contact  
3 debtors in this district.” (#6 at 2.) MCT avers that the Court does not have general or specific  
4 jurisdiction over them. The Court does not agree.

## 5 **II. Legal Standard**

### 6 **A. Dismissal under Rule 12(b)(3)**

7 A defendant may raise a Rule 12(b)(3) motion to dismiss for improper venue in its first  
8 responsive pleading or by a separate pre-answer motion. Fed. R. Civ. P. 12(b)(3). Once the  
9 defendant challenges venue, the plaintiff bears the burden of establishing that venue is proper.  
10 Piedmont Label Co. v. Sun Garden Packing Co., 598 F.2d 491, 496 (9th Cir. 1979). When making a  
11 venue determination under Rule 12(b)(3), the well-pleaded allegations of the Complaint are taken as  
12 true, and any evidence or disputed facts must be viewed in the light most favorable to the non-  
13 moving party. Murphy v. Schneider Nat’l, Inc., 362 F.3d 1133, 1138 (9th Cir. 2004); see also Ginter  
14 ex rel. Ballard v. Belcher, Prendergast & Laporte, 536 F.3d 439, 448–49 (5th Cir. 2008).

15 Plaintiff avers that venue is proper in this district under 28 U.S.C. §§ 1391(b) and (c) which  
16 state that a civil action wherein jurisdiction is not founded solely on diversity of citizenship may be  
17 brought only in “(1) a judicial district where any defendant resides, if all defendants reside in the  
18 same State, (2) a judicial district in which a substantial part of the events or omissions giving rise to  
19 the claim occurred, or a substantial part of property that is the subject of the action is situated, or (3)  
20 a judicial district in which any defendant may be found, if there is no district in which the action may  
21 otherwise be brought.” 28 U.S.C. § 1391(b). Section (c) provides, in pertinent part, that a corporate  
22 defendant is deemed to reside “in any judicial district in which it is subject to personal jurisdiction at  
23 the time the action is commenced.” 28 U.S.C. § 1391.

24 Under 28 U.S.C. § 1406, should a court determine that venue is improper within its district, it  
25 may dismiss the case or transfer it to a district where venue properly lies. See § 1406(a).

1 Furthermore, under 28 U.S.C. § 1404, a district court may “in the interest of justice” transfer a case  
2 to any other district where venue lies “[f]or the convenience of parties and witnesses” even if venue  
3 is proper in the original district under § 1391. 28 U.S.C. § 1404(a).

4 Defendant argues that venue pursuant to §1391 is not proper here because MCT does not  
5 reside in this district, because the events giving rise to Plaintiff’s claim occurred outside of the  
6 district, and because MCT is not subject to personal jurisdiction in Nevada. Resultantly, Defendant  
7 asks the Court to dismiss the action, or alternatively, that the Court transfer venue to the Central  
8 District of California. An examination of the Complaint however, reveals that venue is proper in this  
9 district pursuant to 28 U.S.C. § 1391.

10 **B. Personal Jurisdiction**

11 Personal jurisdiction over nonresident defendants may be predicated on “continuous and  
12 systematic” contacts with the forum state, subjecting the defendant to a court’s “general” jurisdiction,  
13 see Shute v. Carnival Cruise Lines, 897 F.2d 377, 380 (9th Cir. 1990), rev’d on other grounds, 499  
14 U.S. 585 (1991), or on the fact that the cause of action arose out of a defendant’s forum related  
15 activities, subjecting him to a court’s “limited” or “specific” jurisdiction. Roth v. Garcia Marquez,  
16 942 F.2d 617, 620 (9th Cir. 1991); Sinatra v. National Enquirer, Inc., 854 F.2d 1191, 1194–95 (9th  
17 Cir. 1988). Plaintiff contends that general jurisdiction cannot be determined without further  
18 discovery of MCT’s business practices; thus, for the sake of judicial economy, the Court’s venue  
19 inquiry here turns to whether MCT’s alleged conduct should subject it to this Court’s specific  
20 jurisdiction.

21 A district court can assert limited jurisdiction over a nonresident defendant if the following  
22 three conditions are satisfied: (1) the nonresident defendant performs some act purposefully availing  
23 himself of the privilege of conducting activities in the forum; (2) the claim arises out of the  
24 defendant’s forum related activities; and (3) the exercise of jurisdiction is reasonable. Sinatra, 854  
25 F.2d at 1194 (citing Decker Coal Co. v. Commonwealth Edison Co., 805 F.2d 834, 839 (9th  
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1 Cir.1986)). Each of these tests must be satisfied. Peterson v. Kennedy, 771 F.2d 1244, 1261 (9th  
2 Cir.1985), cert. denied, 475 U.S. 1122 (1986). At this early stage of the proceedings, Plaintiff need  
3 only make a prima facie showing of personal jurisdiction, and, as no evidentiary hearing on this issue  
4 has been held, thus the Court must treat Plaintiff's allegations as true. Sher v. Johnson, 911 F.2d  
5 1357, 1361 (9th Cir. 1990).

6 Here, MCT has purposefully availed itself within the district. It is well established that a  
7 single contact with the forum state, not involving the physical presence of the defendant, can be a  
8 sufficient basis upon which to establish jurisdiction over the defendant. McGee v. International Life  
9 Ins. Co., 355 U.S. 220, 223,(1957). The communication at issue here is not merely a means of  
10 conducting some other primary business within the forum state. Rather, the Complaint alleges that  
11 the communications sent to Plaintiff by MCT, together with its attachment of Plaintiff's Nevada  
12 bank account, are the very subject matter of the action pursuant to the FDCPA. See Paradise v.  
13 Robinson and Hoover, 883 F.Supp. 521 (D. Nev. 1995). Moreover, because "receipt of a collection  
14 notice is a substantial part of the events giving rise to a claim under the Fair Debt Collection  
15 Practices Act," Bates v. C & S Adjusters, Inc., 980 F.2d 865, 868 (2d Cir. 1992), the district where a  
16 communication is received is a proper venue under subdivision (2) of section 1391(b). Id. at  
17 866–867.

18 The allegations in Plaintiff's Complaint support the exercise of personal jurisdiction over  
19 Defendant. Individuals should be able to file suit in the state where they receive alleged illegal  
20 communications by out-of-state collection agencies. If not, collection agencies "could invoke the  
21 protection of distance and send violative letters with relative impunity." Vlasak v. Rapid Collection  
22 Systems, Inc., 962 F.Supp. 1096, 1102 (N.D. Ill. 1997). Moreover, states share an interest in  
23 preventing abuse by collectors. As articulated by the Senate Committee on Banking, Housing and  
24 Urban Affairs, the FDCPA was established because "collection abuse has grown from a state  
25 problem to a national problem . . . [Federal legislation is necessary because] State officials are unable  
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1 to act against unscrupulous debt collectors who harass consumers from another state.” 1977  
2 U.S.Code Cong. & Ad. News 1695, 1697. “Accordingly, if it becomes more difficult and costly for  
3 consumers to file suit, consumer protection within the states would be eroded.” Gilmor v. Account  
4 Management, Inc., 2009 WL 2848278 at \*4 (N.D. Ga., 2009). Therefore, viewing the facts in the  
5 light most favorable to the Plaintiff, the Court finds personal jurisdiction over the Defendant is  
6 warranted in this case and that Defendant’s Motion to Change Venue must be denied.

7 **III. Conclusion**

8 Accordingly, **IT IS HEREBY ORDERED** that Defendant MCT Group Inc.’s (“MCT”)  
9 Motion to Dismiss/Change Venue (#6) is **DENIED**.

10 DATED this 10th day of February 2011.

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13 Kent J. Dawson  
United States District Judge  
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